

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2005-094277

02/22/2011

HONORABLE BRUCE R. COHEN

CLERK OF THE COURT

C. Gauna

Deputy

IN RE THE MATTER OF
LINDA RAE JOHNSON

LINDA RAE JOHNSON
10860 E MAVERICK TRAIL
GOLD CANYON AZ 85218

AND

MICHAEL ZIRALDO

MICHAEL ZIRALDO
1833 W CANYON WAY
CHANDLER AZ 85248

FAMILY COURT SERVICES-CCC

**UNDER ADVISEMENT RULING
ORDERS RE: CUSTODY, PARENTING TIME, CHILD SUPPORT
AND REIMBURSEMENT CLAIMS**

There were various issues presented to the Court on February 16, 2011. Those issues, and the Court's finding and rulings thereon, are as follows:

Custody and Parenting Time Issues

Despite previously stated differences, the parties have agreed to maintain the joint legal custody award of Erik. Therefore, the prior order is affirmed.

As for the parenting time schedule, both parties acknowledged that Erik has many outside activities and interests. Neither believed that a set schedule was appropriate at this time. The Court has concerns that the rift between Erik and Father may continue in the future and without a set schedule, there will not be specific opportunities for them to address those issues. With that stated, the Court will accept the agreement of the parties. Erik shall remain in the primary

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physical care of Mother and parenting time between Father and Erik shall be as arranged between Father and Erik (without interference from Mother).

Child Support

For child support purposes and in lieu of a separate Child Support Worksheet, the Court makes the following findings:

Father's Income:	\$5,316 ¹
Mother's Income:	\$2,235 ²
Adjustments to Father's Income:	\$0
Adjustments to Mother's Income:	\$0
Basic Support Obligation	\$928
Over 12 Adjustment	\$93
Health Insurance Paid by Father:	\$191 ³
Parenting Time Adjustment	3.1% ⁴

In applying these findings under the Arizona Child Support Guidelines,

IT IS THEREFORE ORDERED that Father's retroactive child support obligation to Mother for the period from June 1, 2010 through and including February 28, 2011, is \$633 per month. Over this nine month period, this totals \$5,697. He is expected to make payments on this amount as it is addressed in the "Past Support and Credits" section below.

Circumstances have changed materially as it relates to the on-going child support award. Once severance pay runs out at the end of February, 2011, Father shall be unemployed. It is unknown when he will become gainfully employed and in current economic circumstances, there is cause for concern that the period of unemployment could be lengthy. His historic earnings do not necessarily reflect what income he will now or in the future earn. Therefore, it is appropriate to

¹ Father has just been laid off from his job and is presently unemployed. He was earning approximately \$5,300 per month. With severance, his income will end by the end of February, 2011. Father does not have "a damn clue" as to what he is going to do. The Court is therefore not going to attribute to him his historic earnings for the on-going portion of child support. This is addressed below.

² Mother just graduated from college and is now qualified to be a teacher. She has not, however, secured employment. She testified that attribution of \$2,235 per month is appropriate. Father is concerned that Mother could have used the past years to increase her earning potential and feels that this is a low figure.

³ The monthly cost is approximately \$575 per month but this includes Allie and Father as well so an adjustment is made for Erik's portion only.

⁴ This is a nominal parenting time adjustment as significant time has not taken place and is not expected to in the foreseeable future.

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attribute some level of income and build in a disclosure process to address what will occur once he secures employment.

Assuming an attributed income to Father of \$2,000 per month as of March 1, 2011, his on-going child support obligation to Mother would be \$267 per month, commencing March, 2011. However, as noted below, Mother owes certain amounts to Father from past support and reimbursement claims. Therefore, as part of the reconciliation of all of the awards made herein, Father shall not commence actual child support payments to Mother of \$267 per month until June, 2011. Payments shall then continue thereafter through August, 2012, at which time it is presumed that Erik shall have graduated from high school and reached the age of majority.

IT IS THEREFORE ORDERED that from March, 2011 through May 31, 2011, no child support shall be paid from Father to Mother.

IT IS FURTHER ORDERED that commencing June 1, 2011 and continuing each month thereafter, Father shall pay to Mother, through the Support Clearinghouse, the sum of \$267 per month. This shall apply unless modified due to changes in employment or economic circumstances.

Since the award is based upon income attribution for both parties, it is imperative that there be a disclosure provision that will apply to both parties. Within 72 hours of either party securing full or part-time employment of any nature, that party shall disclose the following to the other party: name, address and phone number of employer; job title and description; salary or hourly wage; and benefits, such as insurance coverage, bonuses, commissions or expenses reimbursement. Thereafter, upon receipt of each of the first two paychecks, that party shall provide to the other a full and complete copy of the pay stub or other proof of the actual earnings.

By making this disclosure, it will allow the other party to determine whether to seek modification of support. Therefore, if either party fails to make the disclosures required herein and the other party later discovers that the employment change occurred prior to disclosure or knowledge, a sanction against the non-disclosing party can include a retroactive modification of child support to the first day of the month following the securing of the new employment. This sanction would usurp the provisions of A.R.S. Section 25-327.

LET THE RECORD REFLECT an Order of Assignment is initiated electronically by the above-named deputy clerk.

All payments shall be made through the Support Clearinghouse via an automatic Order of Assignment issued this date. Father is advised that from June 1, 2011 (the start of the actual

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support payments) until such time as the Order of Assignment becomes effective, he has an affirmative obligation to pay the child support directly to the Support Clearinghouse.

Pursuant to A.R.S. § 25-503.I, the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

Insurance and Unreimbursed Medical Expenses

IT IS FURTHER ORDERED that Father shall provide medical insurance for the benefit of the parties' minor child, and shall provide an insurance card and claim filing information/forms to the other parent. All medical, dental and orthodontia expenses incurred for the health and protection of the child not covered by insurance shall be paid 50% by Father and 50% by Mother.

Both parents should use their best efforts to obtain services that are covered by the insurance. A parent who is entitled to receive reimbursement from the other parent for medical costs not covered by insurance shall, upon request of the other parent, provide receipts or other evidence of payments actually made.

Past Support and Credits

There is an issue as to how much money is owed by Mother to Father based upon prior orders. As noted in the minute entry of September 20, 2010, the starting point is that Mother owes to Father the sum of \$7,766.

Mother believes that she is entitled to credits for medical expenses. She testified that Father's 60% share of those expenses totaling of \$3,725.79 would be \$2,235.47. Father testified that some of the expenses listed by Mother were incurred for Allie after she was no longer subject to a support order. Excluding the expenses incurred for Allie after she reached the age of majority and graduated from high school, Mother states that the total incurred was \$1,715.37 for which Father's 60% would be \$1,029.22

Father also notes that he incurred orthodontic expenses for Allie that totaled \$4,475. He feels that this more than offsets the claims of Mother. Mathematically, this would true (if the Court rejects expenses incurred for Allie after she was no longer subject to the jurisdiction of this Court) as Mother's 40% of his total would be \$1,790. Mother notes that she did not approve of the incurring of the expense and should therefore not be responsible. Unfortunately, even if true, this does not negate the claim herein as the issue for the Court is whether the expenses were reasonably necessary. In this regard, it appears that the care was required for Allie.

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According to Father, there were other expenses that incurred for the children, including medications, contact lenses and the like. He has not put forth his claim for those expenses but notes it as it relates to the claims herein.

The Court has considered these positions of each party. As to the claim that Mother or Father is entitled to any amounts for past medical related expenses, they are both denied. Mother is not entitled to credits, as requested above, and to the extent Father has incurred expenses of this nature for the children, he shall not have the right to seek reimbursement from Mother.

Another argument made by Mother is that within a few months of entry of the Decree, Allie was no longer subject to a child support order and as such, she was technically ordered to pay too much in the years that followed since her obligation existed only for Erik. From her perspective, she concluded that her monthly obligation for 21 of the months was approximately \$120 per month less than the Court ordered amount that applied only to Erik. Father opposes any such credit. He notes correctly that Mother could have at any time filed for modification of support and failed to do so.

As a matter of law, the Court must find in favor of Father. A.R.S. Section 25-327(A) does not allow for retroactive modification of support. In essence, Mother is seeking a retroactive award to a time period that predated any filing for relief by almost two years. This Court lacks jurisdiction to do so, and the claim is denied.

Mother is also seeking a credit for having provided dental insurance coverage for the children. The Court order assigned to Father the requirement to maintain the coverage and when he did not have it available, Mother secured a policy and the cost was \$379.90, for which she believes she should be credited. Father responds that it is a family plan and may have covered others. While this is accurate, it is clear that the policy was incurred for the children and not Mother. Further, Father states that she could have come to him to discuss it after his company dropped the coverage. For this issue, the Court is finding that Mother is entitled to a credit for \$379.90.

As an additional credit, Mother is seeking an offset for back taxes. For 2003 and 2004, there were taxes owed by both parties that Mother later paid off. Mother testified that the total amount was \$1,789.62, for which she believes Father should be responsible for one-half thereof. Father could not find a basis to oppose this claim and the Court therefore finds that Mother is entitled to a credit for \$894.81.

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Mother included in her credits expenses that she paid on behalf of the children. This included a library fine and summer school, totaling \$138.60.⁵ Father responds that he paid for “everything else” that the children did and he was therefore incensed that Mother would raise this claim.⁶ Once again, the Court must concur with Father and Mother’s claim for a credit for \$69.30 is denied.

Among the claims raised by Mother were expenses incurred for Allie’s auto insurance after she was no longer subject to a child support order. She testified that she incurred \$1,882.40 in total. Assuming the truth of the claim, there is no basis to provide an offset for expenses that are incurred for an adult child, whether that is fair or not. This claim is therefore denied.

Lastly, Mother had proof of clothing and school supplies that she paid for the children over time. She testified that the total was \$1,835.08 and the amount should be credited against child support. As a matter of law, child support cannot be satisfied through alternatives to actual payments, unless agreed upon. This Court is not in a position to assess outside expenses for which contributions were made and then credit that against a precise monthly support amount. This finding applies without even having to consider Father’s claims that he paid expenses that may have been “ten times” the expenses listed by Mother, a claim disputed by Mother. In any event, Mother’s claim is denied.

As a recap of the foregoing, the claims made by Mother that were granted were for \$379.90 and \$894.81, for a total of \$1,274.71. In addition, Father owes to Mother the total sum of \$5,697 for child support from June, 2010 through February 28, 2011 (as addressed in the “Child Support” section above). This brings the total credits due to Mother to \$6,971.71. Since the starting figure due from Mother to Father was \$7,766, the net result is that Father is owed by Mother a net amount of \$794.29.

It would be inappropriate to force Father to pay child support to Mother at a time in which she owes to him amounts due for past support. This Court has found that Father’s child support obligation to Mother for Erik shall be \$267 per month, commencing March, 2011. Therefore, if Father is permitted to withhold child support for three months, he shall be deemed to have satisfied his ongoing support in exchange for Mother being deemed to have satisfied past amounts owed to Father. Therefore, as ordered above, the first actual child support payment from Father to Mother shall be June, 2011, at which time all claims for past child support through May 31, 2011 and past reimbursement through February 16, 2011 shall be deemed satisfied.

⁵ The Court is not including the one-half of the football camp expense for Erik that was paid by Mother as Father paid the other one-half.

⁶ Mother denies that Father paid for “everything else” and notes that she limited her claims to the expenses referenced herein because these are the only ones for which she had receipts.

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IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81(D), Arizona Rules of Family Law Procedure.

Dated this 22nd day of February, 2011

/S/ BRUCE R. COHEN

BRUCE R. COHEN
SUPERIOR COURT JUDICIAL OFFICER

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

Attachments:

MICHAEL ZIRALDO: Non IV-D Payment Instructions, Current Employer Information